

beyond a very small number of select markets.

The local competitive entry to date is primarily located in the largest urban areas, Grand Rapids and Detroit, but competitors have facilities in several other communities, including Lansing, Ann Arbor, and Traverse City.

Ameritech remains, however, by far the dominant provider of local exchange services, with a near monopoly in its service areas. Most parts of Michigan still have no local competition, save possibly on a resale-basis, since such CLEC competition as exists in Michigan is overwhelmingly concentrated in parts of the cities of Grand Rapids and Detroit and is primarily focused on business customers...

Given this level of competition, we cannot presume that no barriers to entry exist. At the same time, given the successful small-scale entry that have occurred using all three paths, we cannot presume that the local markets necessarily remain closed either.⁸⁹

The FCC used a similar string of adjectives⁹⁰ and offered a long series of examples of evidence that indicated the goals of the Act to promote competition are being met.⁹¹

C. OTHER PUBLIC INTEREST ISSUES

The public interest inquiry need not be limited only to competitiveness questions, however. The Michigan Consumer Federation points out that the impact of entry on other public policy goals in the 1996 Act should be considered (not to mention the broad range of considerations generally associated with the public interest standard).

For example, the 1996 Act clearly calls for service quality to be maintained and enhanced. It suggests that entry into long distance could result in a diversion of attention from this important

⁸⁹ DOJ, Michigan, pp. 32-33.

⁹⁰ FCC Michigan, para. .

⁹¹ FCC Michigan, paras. 391-402.

goal. A company that had not achieved the service quality goals of the Act could well be denied entry until it showed that it could handle the burden of long distance while enhancing quality

Ameritech's spiraling diversification and emphasis on one-stop shopping strategy are apparently creating serious management distractions... The resulting distraction is at the expense of attention to the core business and network that most consumers must rely upon -- and are paying for -- long into the foreseeable future. Withholding long distance entry until Ameritech Michigan has been forced to attend to the needs of its core network and customer base is in the public interest.⁹²

The Michigan Consumer Federation also calls for consumer education policies to be in place before entry is authorized to prevent quality problems and to promote competition.

Of practical concern to ratepayers is the absence of administrative procedures as a framework for handling day-to-day problems already being faced by customers who have switched to a competitor. For example, as between Ameritech Michigan and competitive providers, how do customers identify which entity is responsible for problems being encountered. The lack of administrative procedures also impedes provider accountability and contributes to consumer confusion in trying to determine whether customers must seek redress with regulators or whether in a "competitive" environment, they now have recourse in court.⁹³

Finally, the Michigan Consumer Federation argues that a variety of rate questions should be addressed in considering whether the public interest would be served in authorizing entry. These cover local rate impact (to be considered by the state commission) but also embedded excesses in interstate rates and are related back to competitive issues.

It is not in the public interest to grant long distance authority until Ameritech Michigan's monopoly revenue streams have been eliminated. Local competition cannot occur if Ameritech Michigan continues to collect excess monopoly revenues for use in gaining competitive advantage. Before entry into long distance takes effect, the Commission must curtail Ameritech Michigan's monopoly revenue streams. That unfair advantage currently exists as a result of excess

⁹² MCF, p. 7.

⁹³ MCF, p. 6.

access charges and from Ameritech Michigan's current price cap formula which includes an overly high rate of return and inadequate productivity factor.⁹⁴

These discussions by third party intervenors leads to a significant number of issues to be raised in implementing the public interest standard under the 1996 Act (see Table 8).

⁹⁴ MCF, p. 6.

TABLE 8
ELEMENTS OF THE PUBLIC INTEREST TEST

COMPETITION

1) POSSIBLE STANDARDS

- a) PROBABILITY TO
SUBSTANTIALLY
IMPEDE COMPETITION**
- b) VIII[C] TEST**
- c) OTHER STANDARD**

**2) EVIDENCE TO CONSIDER
ON COMPETITION**

- a) MARKET SHARES**
- b) PRICE LEVELS**
- c) PRICE TRENDS**
- d) PROFIT LEVELS**
- e) SERVICE QUALITY**
- f) OPTIONS**
- g) INVESTMENT PATTERNS**

OTHER PUBLIC INTEREST FACTORS

- 1) SERVICE QUALITY**
- 2) CONSUMER PROTECTION**
- 3) RATE STRUCTURES AND REFORM**

EVIDENTIARY PROCEEDINGS

- 1) CONDUCT OF HEARING**
- 2) SWORN TESTIMONY**
- 3) IN THE RECORD**
- 4) SUBSTANTIAL EVIDENCE**
- 5) PREPONDERANCE OF THE EVIDENCE**
- 6) OUTSTANDING COMPLAINTS**

APPENDIX A
INDUSTRY CHARACTERISTICS

Table A-1 presents the basis for the excess profits calculation.

The high figures are based on 1996 result only. This assumes that a competitive rate of return on equity is 15 percent based on the following return on equity: Business Week 1000 - 16.8. This is quite generous, since other measures show lower rates of return for the economy as a whole (e.g. Forbes 1200 - 13.0, Fortune 500 - 14.1). The low estimate is based on the three year average return on equity.

RBOC reasonable rate of return is equal to .9 percent of national average reflecting the lower level of risk RBOCs face in their core businesses. The Beta for RBOCs is .9 compared to a Beta of 1 or more for long distance companies.

The tax effect converts after tax profits to pre-tax overcharges by dividing by .62.

TABLE A-1:

ESTIMATION OF EXCESS PROFITS AND POTENTIAL PRICE REDUCTIONS

COMPANY	1994-96	1996	1995	1994
ATT	18.1	26.6	.7	28.2
MCI	8.5	10.5	5.7	8.8
SPRINT	17.4	14.2	20.6	20.0
LD AVG.	14.9	19.5	4.8	19.5
AMERITECH	23.6	28.8	28.6	14.5
BELL ATLANTIC	24.7	23.9	28.1	22.1
BELL SOUTH	16.7	21.6	13.2	15.0
GTE	30.1	40.2	28.8	24.2
NYNEX	15.1	19.9	17.9	9.3
PACTEL	32.3	40.3	47.9	21.7
SBC	26.8	30.7	30.8	20.5
US WEST	27.1	31.0	34.1	21.2
LOCAL AVG.	23.3	27.7	25.3	18.1
BW 1000	16.0	16.8	15.7	15.4

EXCESS PROFITS AND CHARGES

(Billions of Dollars per year)

LONG DISTANCE

AVG.ROE - BW	.0	1.1
AVG.ROE*.9 - BW	.0	1.2
PRICE EFFECT (EXCESS/.62)	.0	2.0

LOCAL

AVG.ROE - BW	4.2	6.0
AVG.ROE*.9 - BW	5.2	7.3
PRICE EFFECT (EXCESS/.62)	8.4	11.8

APPENDIX B

MEASURES OF MARKET CONCENTRATION

Identification of exactly where a small number of firms can exercise market is not a precise science. Generally, however, when the number of significant firms falls into the single digits, there is cause for concern, as the following suggests (J.W. Friedman, Oligopoly Theory (Cambridge University Press, 1983), pp. 8-9).

Where is the line to be drawn between oligopoly and competition? At what number do we draw the line between few and many? In principle, competition applies when the number of competing firms is infinite; at the same time, the textbooks usually say that a market is competitive if the cross effects between firms are negligible. Up to six firms one has oligopoly, and with fifty firms or more of roughly equal size one has competition; however, for sizes in between it may be difficult to say. The answer is not a matter of principle but rather an empirical matter.

The clear danger of a market with a structure equivalent to only six equal sized firms was recognized by the Department of Justice in its Merger Guidelines (revised 1984). These guidelines were defined in terms of the Herfindahl-Hirschman Index (HHI). This measure takes the market share of each firm squares it, sums the result and multiplies by 10,000. A market with six equal sized firms would have a HHI of 1667. The Department declared any market with an HHI above 1800 to be highly concentrated. Thus, the key threshold is at about the equivalent of six or fewer firms.

Another way that economists look at a market at this level of concentration is to consider the market share of the largest four firms (4-Firm concentration ratio). In a market with six equal sized firms, the 4-Firm concentration would be 67 percent (see Table B-1). The reason that this is

TABLE B-1
MEASURES OF MARKET CONCENTRATION

TYPE OF MARKET	NUMBER OF EQUAL SIZED FIRMS	4-FIRM CONCENTRATION RATION	HHI
COMPETITIVE			
LOOSE OLIGOPOLY	10	40	1000
MODERATELY CONCENTRATED			
TIGHT OLIGOPOLY	6	67	1667
HIGHLY CONCENTRATED			1800

considered an oligopoly is that with that small a number of firms controlling that large a market share, their ability to avoid competing with each other is clear.

Shepherd describes this threshold as follows (W.G. Shepherd, The Economics of Industrial Organization (Englewood Cliffs: Prentice Hall, 1985), p. 4):

Tight Oligopoly: The leading four firms combined have 60-100 percent of the market; collusion among them is relatively easy.

However, as the above quote indicates, one must have many more firms than six to be confident that competition will prevail -- perhaps as many as fifty. Reflecting this basic observation, the Department of Justice established a second threshold to identify a moderately concentrated market. This market was defined by an HHI of 1000, which is equivalent to a market made up of 10 equal sized firms. In this market, the 4-Firm concentration ratio would be 40 percent.

Shepherd describes this threshold as follows:

Loose Oligopoly: The leading four firms, combined, have 40 percent or less of the market; collusion among them to fix prices is virtually impossible.

The conceptualization and measurement of concentration breaks down as follows:

Even the moderately concentrated threshold of the Merger Guidelines barely begins to move down the danger zone of concentration from 6 to 50 equal sized firms. For a "commodity" with the importance of telecommunications services, certainly this moderately concentrated standard is a more appropriate place to focus in assessing the structure of the market. In other words, in simple economic markets levels of concentration typified by 10 equal sized firms are high enough to raise questions about the competitive behaviors of the firms in the market. Given the nature of telecommunications, this is a conservative level of concentration about which to be

concerned.

PART III

ATTACHMENT 2:

THE EVIDENTIARY RECORD AGAINST APPROVAL OF

BELLSOUTH TELECOMMUNICATION'S

APPLICATION FOR ENTRY INTO

IN-REGION, INTERLATA SERVICE

IN SOUTH CAROLINA

I. INTRODUCTION

This section applies the framework developed in the Last Chance for Local Competition: Section 271 Policies to Open Local Markets to the evidentiary record in South Carolina, as seen by the South Carolina Consumer Advocate, the Department of Justice, and the Florida staff analysis.

Of the four tests that the Telecommunications Act of 1996 lays out as conditions for entry, BST clearly fails three of them.

- o The Consumer Advocate and the Department of Justice conclude that the application fails the public interest test.
- o The Consumer Advocate and the Department of Justice both conclude that BST has not met the facilities-based competition standard (Track A) and has no right to seek approval under the alternative, Track B.
- o The Consumer Advocate, the Department of Justice and the Florida staff analysis of the details of the competitive check list (section 271 (c)(2) show that many of the checklist items have not been provided on a non-discriminatory basis.
- o Since any application for InterLATA entry would be deficient on these grounds, none of the parties has addressed the fourth condition on entry -- affiliate relationships (section 271(c)(3).

For purposes of presentation of the conclusions and insights of these authorities, citations are grouped together after a brief introduction. The source is presenting at the start of each citation with the following identifications scheme. The Sponsoring organization is presented first, its witnesses are presented second. Citations from the Department of Justice or its witnesses are presented first, the Consumer Advocate and its witnesses second, and the Florida staff third. The sources are as follows:

- DOJ = Department of Justice, "Evaluation of the United States Department of Justice," Federal Communications Commission, In the Matter of Application by BellSouth Corporation, et. al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, September 30, 1997.
- A = "Appendix A: Wholesale Support Process and Performance Measures," in *ibid*.
- S = "Marius Schwartz, "The "Open Local Market Standard" For Authorizing BOC InterLATA Entry: Reply to BOC Criticisms," which is Exhibit 2 of the DOJ evaluation.
- F = "Affidavit of Michael J. Fidruss - South Caroline," which is Exhibit 3 of the DOJ evaluation.
- CA = "Brief of the Consumer Advocate," In the Matter of: BellSouth Telecommunications, Inc. Application for Authority to Provide In-region InterLATA Service, Before the Public Service Commission of the State of South Carolina, Docket NO. 97-101-C.
- B = "Testimony of Allen Buckalew," In the Matter of: BellSouth Telecommunications, Inc. Application for Authority to Provide In-region InterLATA Service on Behalf of the Consumer Advocate, Before the Public Service Commission of the State of South Carolina, Docket NO. 97-101-C.
- FLA = Division of Communications and Division of Legal Services, Florida Public Service Commission, Memorandum, Docket No. 960786-TL - Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, October 22, 1997

II. THE PUBLIC INTEREST EVALUATION

Although the public interest test is the last consideration listed in the law, it has become one of the first issue dealt with in many of the comments and will be dealt with first in the evaluations of each application. The public interest issue has been pushed to the forefront because the RBOCs have tried to use a public interest argument to blur the consideration of the specific details of the implementation of the conditions of section 271.

The Consumer Advocate and the staff in Florida turn this around, calling on the states to make public interest findings that run in the opposite direction.

(CA7) In conducting this analysis, the Commission should examine whether the market is open to competition throughout BellSouth's service territory. Competition should be available in both rural and urban areas and in low income as well as high income areas. This does not require there to be competitive alternative for every BellSouth customer. Instead the Commission should require a showing of real and geographically widespread local competition before concluding that BellSouth's entry into the in-region InterLATA market is in the public interest.

(B12) However, the Commission should keep in mind that the FCC will be required to make such a determination as they review the application; therefore, the CA urges the Commission to seize the initiative, actively determine that local service customers have no realistic competitive choices throughout most of the state and recommend to the FCC that granting BellSouth's application is not "in the public interest, convenience and necessity."

(FLA 34-35) While the FCC concluded that section 271 does not mandate a specified level of geographic penetration or market share, the FCC stated that this conclusion does not preclude the FCC from considering competitive conditions or geographic penetration as part of its public interest consideration under section 271 (d) (3) (C). Staff agrees with the FCC's interpretation on this point. Furthermore, staff would note that while no issue in this proceeding specifically deals with the public interest under section 271 (d) (3) (c), it does not prohibit this commission from providing comments regarding public interest considerations, including the competitive conditions in Florida, once BST files a 271 application with the FCC.

**A. THE GOAL: PROMOTING THE PUBLIC INTEREST BY PROMOTING
COMPETITION IN ALL TELECOMMUNICATIONS MARKETS**

1. Both Local and Long Distance Markets Must be Considered

The companies are attempting to attack and weaken the standards established by the DOJ and the FCC by claiming that these standards harm the public interest because they delay RBOC entry. That argument is wrong. The key point is that all marketplaces are to be opened to competition and the impact on both local and long distance markets must be considered, as the following observations of the DOJ and the Consumer Advocate show.

(DOJv) Competitive benefits in markets for InterLATA services do not justify approving this application before BellSouth's local market has been fully and irrevocably opened to competition. BellSouth's estimate of the magnitude of these benefits rests on unconvincing analytical and empirical assumptions, but more importantly, its analysis fails to give adequate consideration to the more substantial benefits from increased competition in local markets that will be gained by requiring that local markets be opened before allowing InterLATA entry.

(DOJ48) BellSouth erroneously contends that the benefits of allowing its entry now into the InterLATA market in South Carolina warrant approval of this application under the "public interest" standard. BellSouth's economic experts significantly overvalued the benefits of the BOC long distance entry now, and undervalued the benefits to be gained from opening BellSouth's local markets.

(S7) The goal of the 1996 Telecommunications Act is to open *all* markets to competition. This includes, in particular, the local market which is both much larger than long distance and is currently the least open to competition. It is important not to lose track of this point -- the key bottleneck that needs to be unclogged is in the local market...

Unfortunately, BOC experts are silent on the benefits of local competition, or even contend that the Open Market Standards for BOC InterLATA entry can play no major role in fostering local competition and could even retard it.

(S8) Putting aside the much larger size of the local market, there is much more

room to improve economic performance in the local market than in the InterLATA market by fostering any additional competition because of the different current competitive conditions in the two markets. The InterLATA market is substantially more competitive (though certainly not perfectly competitive) and largely unregulated. Moreover, absent consolidation, long distance competition will continue to increase even without BOC entry. By contrast, the local market is a largely regulated monopoly rife with distortions...

(S9) My only quarrel on this score with BOC experts is this: if additional competition can deliver such impressive gains in oligopolies, why do they not expect even greater benefits from stimulating competition in local BOC markets that today are largely *monopolies*?

(CA6) The consumer advocate believes that, since there is a level of competition in the long distance market, the primary focus for this Commission in evaluating the public interest should be whether consumers in South Carolina have a realistic choice for local service. If consumers have a realistic choice, many of the other potential problems with BellSouth entry into long distance market will be lessened.

2. Estimating Savings in the Long Distance Market

The DOJ has presented a vigorous and precise refutation of BST's benefits claims. The DOJ has shown that BST and the RBOCs are far off the mark in their estimates.

When these mistakes are eliminated, the overwhelming majority of consumers are not likely to save a great deal as a result of BOC entry into the long distance market

(DOJ48-49) economic incentives of BOCs to cut prices substantially on entering InterLATA markets is considerably weaker than the BOC experts claimed. Long distance markets already are significantly more competitive than local markets. Particularly, higher volume residential and business customers benefit from considerable rivalry. The BOC experts that have estimated large price reductions from BOC InterLATA entry, based on experience with SNET and GTE, have exaggerated the benefits realized by customers from InterLATA competition by those ILECs, by failing to take into account the best available rates from the inter-exchange carriers already in the market and focusing primarily on undiscounted AT&T rates, and the less favorable of the rate plans AT&T offers.

(S26-27) The argument that the BOCs would like to see a lower average

interLATA price than currently prevailing assumes that a BOC can compete only by lowering price, not by increasing competitors' cost or degrading their quality through network access discrimination. (It also assumes, as discussed shortly, the BOCs cannot capture a large share of the interLATA market.) Since the average elasticity of demand for long distance service is estimated to be well below 1 (0.7 is a consensus figure), interLATA industry revenue would be increased by raising price and accepting the reduction in output, hence profits would also be increased (as costs would decrease due to reduced output). Thus, an integrated monopolist over both access and downstream long distance sales *would prefer to raise, not lower, the average interLATA retail price* from today's level...

Following this logic, BOCs entering interLATA retail services and that was capable of expanding its own output rapidly would have incentives to nudge the industry towards the higher monopoly price, by using technological access discrimination to inflate competitors' costs or degrade their quality, thus enabling the BOCs to raise its own price... Hausman's contrary argument, that a BOC would prefer *lower* prices, assumes away the ability of a BOC to undermine IXCs through such access discrimination.

(S29) The key point in stressing that the bulk of BOCs interLATA profits are likely to come from retail revenues rather than from increased access minutes is this; an increase in BOCs share of interLATA revenues might be achieved largely by *diverting* output away from IXCs *not by expanding industry output*. Therefore it need not hinge on reducing industry price significantly; and hence BOCs may not have strong incentives to cut interLATA prices.

(S31-32) Professor Hausman assumes that BOC entry would bring about a price reduction of about 18 percent and applies this figure to *all* interLATA revenues from residential customers. But in 1995 only 77 percent of all interLATA minutes originated in BOCs service areas... Making this correction would deflate Hausman's projected benefits to consumers by about one quarter -- even assuming, counter factually, that his projected percentage price reduction in region is accurate.

Second, Professors Hausman and McAvoy over estimate the scope of the likely price reduction in BOCs regions. Even if entry might plausible yield price reductions of the order of 15 percent to low volume residential customers that do not participate in IXC discount plans, the majority of interLATA expenditures are made by higher volume customers who do not participate in discount plans and for whom competition already is more intense. For example, AT&T already offers 10 cent per minute anytime rates, anywhere with a relatively low flat monthly fee. High-volume residential customers subscribing to such plans are likely to see considerably smaller price reductions than those assumed by Professor Hausman.

(S32-33) However, the 17 to 18 percent average residential rate reductions predicted by Professor Hausman based on his interpretation of the SNET and GTE experiences overstates this potential substantially for at least two reasons.

First, Professor Hausman selectively focuses on certain relatively high-priced AT&T rate plans and fails to consider lower rate plans already offered by AT&T and other IXCs. These low rate plans should induce customers to migrate from the particular, relatively high-priced AT&T schedules that Professor Hausman selected for his IXC/AT&T rate comparison, even absent the availability of SNET or GTE interLATA service. In fact, for the *off peak* callers that make up the bulk of the residential market, SNET and GTE *do not* offer the best interLATA rates available in their respective territories, *for any customer calling volume*. For *on peak* calling, competing carriers also have lower rates than GTE *for most service levels*, while the comparison of their rates with those of SNET is mixed.

Second, although Hausman's submissions do not state how he weighted the rate schedules that he does compare, the 17 to 18 percent projected average price reduction appears to be based on initial average prices that are computed by weighting prices in discount and non-discount plans according to the number of customers in each. This ignores the fact that customers in discount plans tend to be the heavier users and account for a much higher share of both minutes and total expenditure.

(S34-35) Competition has been increasing in long distance services to a significant extent even in the absence of BOC entry... Thus, it is misleading to argue that prices with BOCs entry would be lower than without it by about 15 to 20 percent in steady state. Rather, BOC entry would accelerate and perhaps deepen the already intensifying competition. Barring consolidation, this competition would bring interLATA prices lower even without BOC entry. The added reduction in prices that hinges on BOC entry is therefore likely to diminish overtime.

(CA 6) In its testimony, BellSouth urges this commission to look only at the effects of its entry will have on the InterLATA market. While witnesses for BellSouth long distance testified that its entry into the long distance market will result in lower prices, there is no guarantee that BellSouth will not become part of the IXC lockstep pricing problem the company criticizes in its testimony. There is also no guarantee that BellSouth will have to cut long distance prices in order to obtain market share. Therefore, while there may be benefit to BellSouth entry, that benefit is speculative, at best, given the current state of competition in that market.

3. Creating the Benefits of Local Competition

Both the Consumer Advocate and the DOJ have pointed out that BST's analysis of the public interest ignores the benefits of competition in the local market. Both conclude that there is vastly more to be gained by obtaining increased competition in the local market than in the long distance market.

(DOJ49) Still more important, BellSouth and its economic experts, as well as experts retained by BOCs in previous entry applications, have failed to give adequate consideration to the more substantial benefits to be gained from requiring that the BOCs' local markets be open before allowing InterLATA entry. Their analyses have simply assumed that the requirements of section 271 would be satisfied, or address the benefits of local competition in a cursory manner that under values the importance...

Because the local markets are both much larger than InterLATA markets and still largely monopolies, the benefits from opening the BOCs' local market to competition prior to allowing BOC InterLATA entry are likely to substantially exceed the benefits to the gained from more rapid BOC participation in long distance markets.

(DOJ51)The Department does not endorse the aspects of the BellSouth's analysis, which fails to take into account important differences between various types of entrants. But, more significantly, BellSouth and the BOC experts failed to appreciate that regardless of the incentives a provider may have to enter local markets, if it does not have an adequate opportunity to enter, then entry will not occur.

(S6) It is widely acknowledge that integrated services are valuable to consumers (e.g., one-stop shopping) and can reduce retailing costs for suppliers, and I noted in my initial affidavit that delaying BOC InterLATA entry and thus BOCs ability to offer such services comes at a cost. But this cost is short-lived, and outweighed by the benefit: instead of leaving provision of integrated services as a monopoly of the local BOC, opening the local market enhances the ability of all other providers to compete for providing integrated services. Therefore, if one views integrated services as important, than permitting broad competition in their provision -- by making currently monopoly local inputs and services widely and efficiently available to competitors -- should be a central goal of public policy..

4. The Costs of Allowing Premature RBOC Entry into Long Distance

The problem of premature entry of RBOCs into in-region long distance should be seen as more complicated than the quantified value of price cuts. Premature entry has a number of anti-competitive implications that would deal a severe blow to local competition.

(B6) We also believe that if BellSouth is given access to in-region InterLATA toll, it will have no incentive to actually provide competitive local exchange carriers (CLECs) with interconnection or the other necessary pre-entry conditions. On the contrary, BellSouth will become motivated to drag its corporate feet and hinder CLECs from having the same ubiquitous, bundled service offerings, thus giving BellSouth a significant advantage. Therefore, CA urges the Commission to withhold any statement verifying that BellSouth is in compliance with section 271(c) of the Act.

(S26) The *ability* of IXC's and other non-BOCs to accomplish such vertical integration, however, depends heavily on obtaining adequate cooperation from the BOCs in providing interconnection to and unbundling of the local networks. Consequently, a consideration of double marginalization does not necessarily suggest a more lenient standard for BOC entry, in large part because such a standard is less likely to elicit adequate BOC cooperation. Moreover, to stress BOC's unique ability to operate as an integrated provider would be to concede that the prospects for local competition in access are not rosy, a far cry from positions taken by BOCs in various proceedings.

(B13) Since "local" services would have to be part of any complete bundle, effective competition in local exchange and access services are necessary condition for effective competition in bundled services. Hence, the competitive implications for the local exchange and access markets also apply to this bundled service market. Taken together, these factors are likely to keep local and toll prices at the levels that preceded the Telecommunications Act of 1996 if the application is approved. They also could curb technological advancement because, as the explosion of technology since the Bell breakup dramatically demonstrates, competition fosters technology in this industry

(B5) In any case, the entry into South Carolina interLATA markets may not result in gains if there is no full-service competition to start with in South Carolina...

Put another way, would a level competitive playing field result if BellSouth is the only company with the current capability to provide ubiquitous unbundled services, that is, both local exchange and total service? BellSouth believes that this bundling

of service is a great benefit:

(B9) Q. IS THERE WORKABLE COMPETITION IN THE LOCAL EXCHANGE MARKETS?

A. No. "Workable competition" exists in a market if any firm participating in that market will lose its market share by raising its price above the cost level (where "cost" includes a reasonable return on investment) of efficient firms...

The conditions for workable competition (primarily the presence of many players) has started to develop in local telecommunications markets. However, if the Commission and the FCC permit BellSouth's premature entry into the in-region InterLATA market, then the beginning of competition may be at an end...

(DOJ34) The limited investment in new facilities means that for the immediately foreseeable future, competition to serve a large majority of South Carolina consumers -- -- most residential customers and customers of all kinds outside of the largest urban areas of the state -- -- can occur only through resale or the use of unbundled network elements. Competitors seeking to use these two entry vehicles will be critically dependent on BellSouth.

(S16-17) As a general matter, exclusive reliance on policing conduct and undoing competitive damage ex post is problematic; this is why, for example, antitrust merger policy places such weight on preventing anti-competitive mergers rather than allowing all mergers and attempting to address anti-competitive conduct after the fact. In the present context, authorizing BOC entry prematurely and relying solely on post entry safeguards to attempt to open BOC local markets to competition is especially dangerous.

5. The Reasons for the Failure of Local Competition

BST claims that local competition has not been created because the long distance companies are gaming the regulatory process by not trying hard enough to get into the local market because they do not want the RBOCs to get into long distance. Simple logic refutes this argument and the evidentiary record in this proceeding demonstrates that BST has made it extremely difficult to enter the local market.

(S12-13-14) BOC experts argue that authorizing BOC InterLATA entry is likely to accelerate rather than delay local competition by removing the alleged incentive of the major IXC's to strategically postpone their own local entry for fear that would trigger approval of BOC InterLATA entry. Indeed, various BOC experts cite this strategic incentive rather than BOC mounted-barriers as the main cause of the slow development of local competition. This argument is erroneous for several reasons.

First, the Open Market Standard does not require local entry by IXC's... The standard recognizes that lack of entry may be due to independent business decisions unrelated to artificial entry barriers... Second, whatever the merits of the claim about strategic delay incentives of IXC's, one must distinguish between IXC's and other potential local competitors that are absent from the long distance market. Such CLECs have no long distance base to protect and thus would have considerably weaker incentives to delay their local entry for purposes of the delaying BOC InterLATA authority.

Third, the theory that local entry is delayed primarily due to CLECs' reluctance to trigger approval of BOC InterLATA authority is not supported by the experienced in states where non-BOC LECS already offer InterLATA services...

In short (a) the alleged incentives of IXC's to strategically delay their local entry in order to delay triggering BOC InterLATA entry would not apply nearly as much to other potential local entrants; (b) the strategic incentive theory is not supported by the facts; and both IXC's and other potential local entrants are equally adamant about BOC imposed entry barriers and the need to withhold BOC InterLATA authority until the local market is opened. A reasonable reading of the evidence in the SBC and Ameritech applications is that the respective BOC's have failed to undertake fully the major market-opening measures required by the Act. Thus the main issue is ability to enter

(B4-5) BellSouth could have already entered the out of region InterLATA toll market which would improved that market. BellSouth's entry into the interLATA market could have already resulted in gains to consumers out of their region. Has BellSouth entered Bell Atlantic's market? We do not know what BellSouth is doing in that market because the company has not answered questions.

(B14) New entry into this market is made difficult by a number of factors, including: (1) brand recognition; (2) established monopoly power; (3) high-cost of new ubiquitous facilities and; (4) the fact that complete, easy and cost-based access to existing facilities has not yet been accomplished and is being resisted by the incumbents. If entry were that easy, why isn't BellSouth entering and competing in local exchange service in the contiguous markets of other BOC's.

B. MAKING THE PROCESS WORK

1. The Need for Cooperation

There is a fundamental problem in the process by which the opening of the local network to competition has been progressing and the core of the problem is the unwillingness of the RBOCs to make the process work. RBOC cooperation is critical but BST has singled out potential competitors and made it extremely difficult for them to enter the market.

(DOJ3) Although BellSouth asserts that it has met the checklist and public interest requirements of section 271, but that assertion rests in large measure on BellSouth's view as to the nature of those requirements -- a view that is often at odds with the plain language of the statute and with the Commissions prior decisions, as well as the 1996 Act underlying competition policy on which DOJ bases its evaluations.

(B 5) This game of playing "hide the ball" from regulators is not new, but may be illustrative of BellSouth behavior if it is allowed to enter the into latter market.

(FLA71-72) Based on the parties' positions above, the primary problem with physical collocation to date is that no requests have been implemented. As noted above, BST has been unsuccessful in meeting the required time frames in its agreements, and based on the record, it does not appear that this situation will change. To date, only one physical co-location agreement has been completed, and the record shows that at this point in time, BST is not providing physical collocation to ALECs at parity with the manner in which it provides it to itself or its affiliates. BST has made no showing before this commission as to why it cannot meet the time frames set by this Commission or in ALEC agreements with MCI, AT&T, a condition set forth in order No. P.SC. -96-1579- FOF-TP.

A major impediment of filling requirements of the Act is the "catch 22" situation with respect to virtual collocation. By definition, virtual collocation requires that only BST personnel have access to the ALECs collocation space. Thus, only BST can act to perform the functions at the collocation necessary to establish and provide service to an ALEC's customers. MCI states that collocation arrangement is one of the most important ways from an engineering perspective that an ALEC can compete with BST. BST has committed only that it will negotiate with ALECs pursuant to its bona fide request (BFR) process in an attempt to establish so-called "glue" charges for combining UNEs at virtual collocations. BST even

then states that it will not commit to providing the combining activity.

Therefore, since the vast majority of today's collocation arrangements are virtual, ALECs are faced with a situation in which they must either pay the "glue" charge or wait until BST completes ALEC orders for physical collocation arrangements. At hearing, BST witness Scheye offered another alternative, i.e. don't utilize collocation arrangements.

Staff views this position as unacceptable. Even witness Scheye admitted that collocation is required for checklist compliance for interconnection and access to UNEs. The glue charges itself is the subject of much dispute since the Act requires that interconnection and UNE rates be based on cost. In addition MCI states that the glue charges is in direct violation of its agreement with BST. Even if the pricing issue is resolved in the near-term, the problems still remains with respect to the length of time required for BST to establish physical collocations, and thus the inability of ALEC's to be able to compete meaningfully in the marketplace. BST has demonstrated no willingness in this proceeding to address this issue in a cooperative fashion. Staff believes that it has the responsibility to do so. Until that time, BST, under its own definition, remains out of compliance with the requirements of the Act.

(FLA 85) Lastly, improved communications between BST and ALECs are essential before service can be deemed satisfactory or at parity. Although everyone carries some responsibility for this, we believe that the Act places a major responsibility on BST to make local competition viable. To that extent, BST must take a leadership role in making that happen.

(Fla 84) Some ALECs are in fact providing service to their customers over interconnection facilities. Substantial evidence was submitted, however, showing that much remains to be done before BST can be said to be in compliance with the requirements of the Act. ALECs individual problems and difficulties with this checklist item, while important themselves, when viewed together, generally indicate that BST has yet to develop the ability, and by the testimony of its witnesses, the mind-set, to provide all facets of interconnection as required in the Act, in a timely and efficient manner.

(FLA 83), AT&T states that a comparison between the way BST treats ALECs and other ILECs may be the one of one of the most definitive tests for discrimination. AT&T notes that BST currently exchanges local traffic, and jointly provides other services with almost every ILEC in Florida pursuant to negotiated interconnection agreements... AT&T states that there are no provisions in the ILEC agreements for the "endlessly time-consuming bona fide requests for every

detail of the joint provision of service that BellSouth imposes on ALECs." AT&T asserts that this disparate treatment constitutes discrimination and hence BST has not complied with requirements of the interconnection checklist.

2. A Consistent and Repeated Failure to Comply with Contracts and Commission Orders.

BST has entered into a series of arbitration agreements with potential entrants. It has repeatedly failed to live up to the terms of those agreements. BST has been ordered by the Commission to make certain services available to and take certain actions to facilitate local competition. It has failed to do so and its proposed Statement of Generally Available Terms (SGAT) fails to comply with those orders. BST has repeatedly refused to implement standards that it is challenging legally, while it unilaterally takes actions that others are challenging. It refuses to subject the disputes that arise to the resolution process to which it agreed.

(FLA 81) There is no evidence in the record showing whether CIC data or ACNA is more reliable. It is in the record, however, that BST has agreed to provide it and does not. This is a violation of its agreement with TCG.

(FLA 82) At hearing, witness Scheye testified that meet point billing is required in most of BST's interconnection agreements. He also stated that BST can provide it to ALECs and that it currently does provide it to independent LECs. BST, despite questioning, has been unable to explain why it is not providing meet point billing data to ALECs.

First, staff believes that this situation must be corrected immediately. BST has not honored the terms of its agreements, and has demonstrated no reason for the lapse.

Second, staff would expect, in a subsequent proceeding, that BST will demonstrate not only that it is providing meet point billing data, but also show how this failure will not recur. Until then, however, staff believes BST has not complied with the terms of its agreement or the Act.

(DOJ35) BellSouth has failed to show that competitors can be assured of appropriate access to essential inputs, i.e. that they will receive unbundled elements from BellSouth in a manner that allows them to combine those elements,